



1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
302 984 6000

www.potteranderson.com

W. Harding Drane, Jr.
Partner
Attorney at Law
wdrane@potteranderson.com
302 984-6019 Direct Phone
302 658-1192 Fax

April 2, 2010

Via Federal Express & Electronic Mail

Ms. Lee Ann Walling
Chief of Planning
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: FCC Environmental Request for Coastal Zone Status Decision –
Response to Certain Public Comments

Dear Ms. Walling:

FCC Environmental submits this brief response to certain of the public comments that were submitted to the Department regarding the FCC Environmental Application For A Coastal Zone Status Decision. Many of the public comments address matters that FCC Environmental addressed in its prior submissions, or issues that are properly raised at the permit stage. FCC will not discuss those topics here.

FCC Environmental would like to reply, however, to some of the assertions by the Widener University School of Law Environmental & Natural Resources Clinic, which are echoed in the submissions of the Delaware Nature Society and Green Delaware. Those comments are to the general effect that the proposed oil recycling facility should be classified as a “petroleum refinery” and as “heavy industry.” FCC Environmental respectfully submits that those comments misinterpret the Coastal Zone Act (“Act”), as well as relevant Delaware court and administrative precedent. Even more to the point, one need only stand on Route 9 and look out over the Valero oil refinery to see clearly that the proposed FCC Environmental oil recycling facility bears no resemblance whatsoever, in terms of purpose, equipment, operations, or scale, to a true petroleum refinery.

Noticeably absent from any of the comments is any reference to the Delaware Hazardous Waste Regulations (“DHWR”), Part 279. As noted in FCC Environmental’s February 24, 2010 letter to the Department, Section 279.1 of the DHWR defines a “Petroleum Refining Facility” as “An establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil,

redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911)." The proposed FCC Environmental facility is not classified under SIC 2911, it does not employ all of the unit operations listed in the regulatory definition, it is not using crude oil in its process, and it does not produce products such as gasoline and kerosene.

Instead, FCC Environmental's proposed facility falls under the classification of a "Used Oil Processor/Re-Refinery", which is defined in Section 279.1 of the DHWR as: "A facility that processes used oil." Section 279.5 of the DHWR defines "Processing" as: "Chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining."

Thus, under the Department's own regulatory definitions regarding used oil recycling, the proposed FCC Environmental facility is not a petroleum refinery. As discussed in FCC's earlier submissions, the *Texaco* case was decided before the Department's adoption of these regulations directed specifically at oil recyclers. Moreover, although the decision of the Coastal Zone Industrial Control Board ("Board") in *Texaco* was appealed to the Superior Court, the appeal ultimately was not pursued, and thus there was no opportunity to test the reasoning underlying that decision in a judicial forum.

In addition, as the Widener letter correctly acknowledges, the Board has cautioned against using the language of the definition of heavy industry "as a kind of checklist." The fact that a proposed facility may have most or all of the enumerated characteristics in the statutory definition does not mean it is heavy industry, particularly when the size of the operation is far less than 20 acres, and the facility does not come within one of the examples enumerated in 7 Del. C. § 7002(e) ("oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes).". As noted in FCC Environmental's status decision application, the entire processing portion of the facility will occupy only eight acres.

In the past, many industrial plants have been held not to be heavy industry, and have been allowed in the Coastal Zone subject to the Act's permit program. For example, the Helix Associates, Inc. facility (Coastal Zone Project No. 112), involved a specialty chemicals manufacturing plant. (See Ex. A hereto). According to the Department's project summary, "[t]he new plant would have most of the physical equipment characteristics of a heavy industry use but the site would be much less than twenty acres and there would be no significant negative environmental effects, in fact by reusing scrap plastic there would be a positive effect." *Id.* Therefore the decision was that the project was not heavy industry, but "would be a new manufacturing use requiring a permit." *Id.*

Another example is Degussa Delaware, Inc. (Project Number 38), involving a chemical plant to be constructed on a 25 acre plot of land in Delaware City. (See Ex. B hereto) The plant would occupy only six acres of the 25 acre site. The Board ruled that the proposed facility did not constitute heavy industry.

A third example is Voigt & Schweitzer, Inc. (Project 372), where the Department recently granted a Coastal Zone Permit for a 5.5 acre zinc coating operation to galvanize 36 million pounds of steel per year. (See Ex. C hereto) The facility would result in 3.36 tons of total air emissions per year, 50 tons of solid waste per year, and 75,000 gallons of hazardous waste per year. (See Ex. D. hereto, p. 2) The Voigt & Schweitzer facility would have the potential to emit 0.19 tons per year ("TPY") of VOCs, 17.45 TPY particulate matter, 6.15 TPY ammonium chloride, 2.50 TPY zinc oxide, and 2.86 TPY carbon monoxide, among other emissions. *Id.*, p. 5.

In addition, the tanks that will be included in the proposed FCC facility will occupy 4 to 4.25 acres at the most. To put this aspect of the plant in perspective, it is noteworthy that under Coastal Zone Act Regulation E.3, "[t]ank farms of less than five acres" are not subject to any regulation under the Act. Of course, all tanks remain subject to regulation under the Department's other programs governing underground and aboveground storage tanks. The relevant point, again, is that the scale of the facility proposed here does not begin to approach the scope of facilities that the Coastal Zone Act prohibits *per se* as heavy industry.

Widener contends that the proposed facility should not be allowed in the Coastal Zone, because it will introduce pollution "that was not there before." This argument fails to recognize that *any* new manufacturing use necessarily will introduce some "new" pollution into the Coastal Zone. The Act and regulations address this issue at the permit stage through the offset process. Thus, the fact that the FCC Environmental proposed facility or any other facility involves "new" pollution does not transform such uses into a prohibited heavy industry use. Also, by eliminating the existing recycling facility in Wilmington, FCC Environmental in effect will offset to some degree any new emissions, because air emissions from nearby areas affect the Coastal Zone.

FCC Environmental has not argued, as Widener suggests, that it is exempt from the Coastal Zone Act *only* because it is a recycling operation or because it will replace the existing facility located adjacent to the Christina River on the Wilmington waterfront. Nevertheless, the "green" purpose of the facility is further indication that it does not fall within the sorts of large industrial complexes that are barred from the Coastal Zone under the Act as heavy industry. (*i.e.* "oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes").

Finally, in addition to its laudable purpose of protecting Delaware's Coastal Zone from facilities that truly do fall within the definition of heavy industry, the Act recognizes that "it is the declared public policy of the State to encourage the introduction of new industry into Delaware" and "to strike the correct balance" between the policies of environmental protection and economic development. See 7 Del. C. § 7001. The stated purpose of the Act also is to effectuate "control of industrial development other than that of heavy industry in the coastal zone of Delaware through a permit system." FCC Environmental will provide jobs and taxes to the State of Delaware consistent with the economic development goals of the Act, while still complying with the Act's longstanding environmental purposes.

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Ms. Lee Ann Walling
April 2, 2010

In conclusion, FCC Environmental submits that its proposed facility does not constitute a heavy industry use as defined in the Act, and it should be regulated through the permit system established under the Act and the Coastal Zone Regulations, as well as under all other applicable regulatory programs. If the Department requires any additional information, FCC Environmental will be happy to respond.

Sincerely,

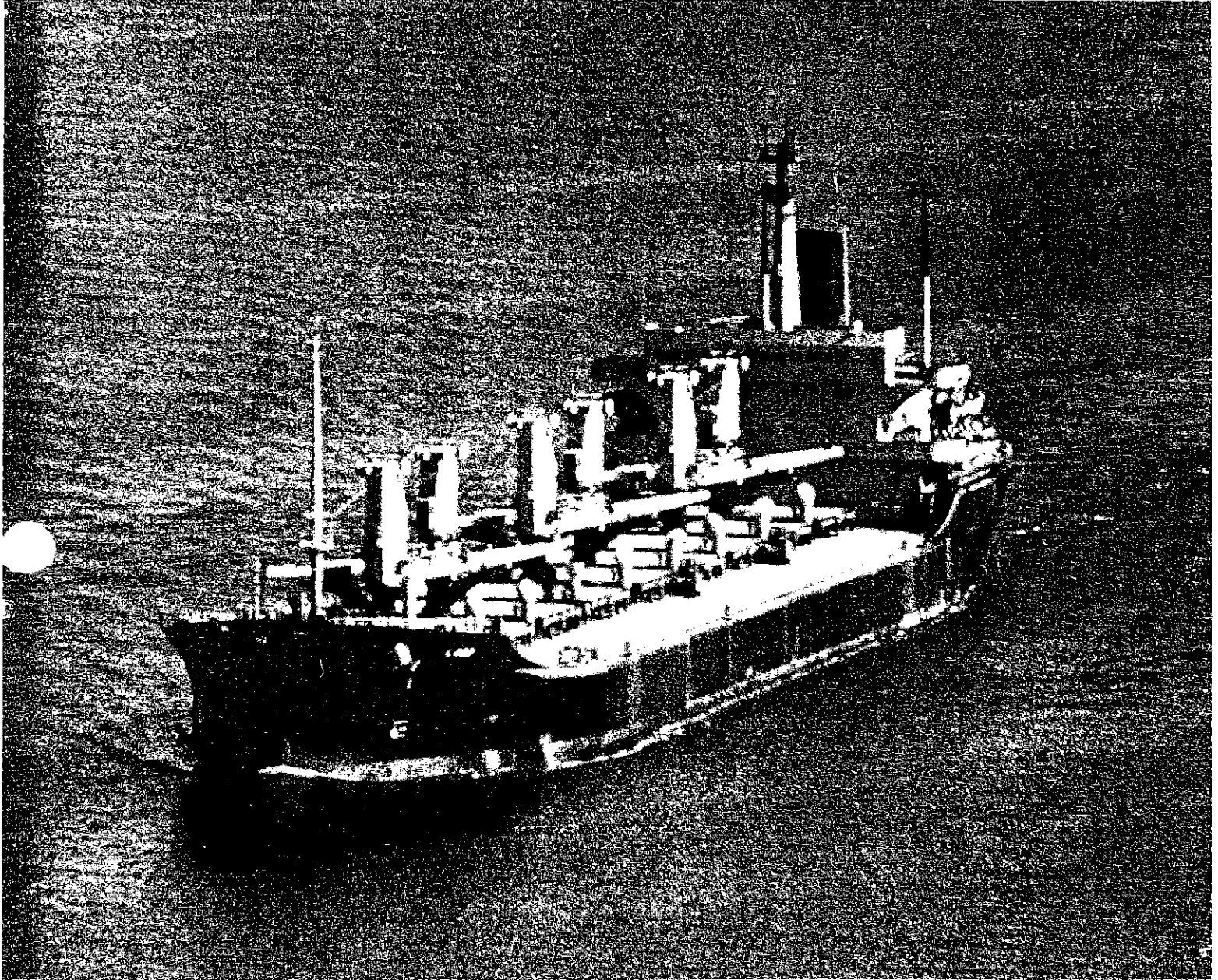

W. Harding Drane, Jr.

WHD:cet
959632/35179

EXHIBIT A

**REPORT ON
COASTAL ZONE ACT ADMINISTRATION**

July 1977 - December 1983



**STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
AND
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

September 1984

nonconforming use, and no new heavy industry use. Although the Coastal Zone Act does not apply, the pipeline would be regulated by the National Pipeline Safety Act and by the Army Corps of Engineers for stream crossings and by the Wetlands Section of DNREC for stream crossings and any use of wetlands.

Project No. 111 -- Delaware Terminal Company. Status application: June 15, 1979. Project: Delaware Terminal Company, a subsidiary of Gulf Interstate Company, proposes construction of five storage tanks for #2 fuel oil and gasoline at its tank farm adjacent to the Wilmington Marine Terminal. Petroleum products would be delivered to the tank farm by a 10 inch pipeline from the Marine Terminal's petroleum pier on the Christina River. This is a storage facility, not a refinery. The new tanks would utilize about 5 acres. Status decision: July 18, 1979. The five new storage tanks are not regulated by the Coastal Zone Act, they are not part of a prohibited bulk product transfer facility. All piers and docking facilities of the Marine Terminal are exempt from this prohibition, and tank farms used entirely for storage and not part of a heavy industry or manufacturing use are not regulated by the Act.

Project No. 112 - Helix Associates, Inc. Status application: September 17, 1979. Project: Helix Associates proposes to move its specialty chemicals manufacturing plant from Newark, Delaware, to the New Castle Industrial Park off Lambsons Lane near Pigeon Point. Helix is a specialty chemical manufacturer making such products as biochemicals, pharmaceuticals, and reagents. Products to be made in the new plant would be drilling mud additives, a synthetic vitamin, and a gas well desulfurizer. Status decision: The status decision of January 22, 1980 was that the new plant in the coastal zone would not be a prohibited heavy industry use but that it would be a new manufacturing use requiring a permit. The new plant would have most of the physical equipment characteristics of a heavy industry use but the site would be much less than twenty acres and there would be no significant negative environmental effects, in fact by re-using scrap plastic there would be a positive effect. No permit application was filed, Helix decided to located outside of the coastal zone.

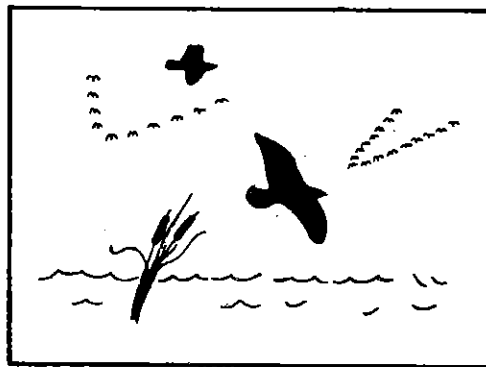
Project No. 113 -- Diamond Shamrock Corporation. Status application: October 29, 1979. Project: Diamond Shamrock proposes to install a 500,000 gallon surge tank in its mercury wastewater treatment system at its chemical plant near Delaware City. The project would be entirely for pollution control purposes; there would be no increase in wastewater discharge flow. Status decision: November 8, 1979. The surge tank is not regulated by the Coastal Zone Act. The Act does not regulate industrial projects purely of a pollution-control nature.

Project No. 114 -- The Arundel Corporation. Status application: November 7, 1979. Project: The project involves The Arundel Corporation taking fly ash and bottom ash from the Delmarva Power and Light Company power plant at Indian River in Sussex County for separation of marketable and unmarketable ash particles. Most of the ash would be fly ash which would be transported to an Arundel terminal for air separation by particle sizes. Arundel will

EXHIBIT B

COASTAL ZONE ACT ADMINISTRATION

JUNE 28, 1971 - JUNE 30, 1977



STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
AND
OFFICE OF MANAGEMENT BUDGET AND PLANNING
FORMERLY DELAWARE STATE
PLANNING OFFICE

NOVEMBER, 1977

Project Number 36 - Stauffer Chemical Company

On June 29, 1973, the Stauffer Chemical Company applied for a coastal zone status decision on a project to replace two steam boilers with two new much larger boilers at its PVC Chemical Plant near Delaware City. A steam boiler capacity increase of more than 3x will result from installation of the new boilers. The Company has applied to the Department of Natural Resources and Environmental Control for a permit from the Air Resources Section.

The status decision of August 29, 1973, was that this project required no coastal zone permit, there was no significant effect and it was not a regulated expansion or extension of a non-conforming use.

There was no appeal of the status decision.

Project Number 37 - Metal Cleaning and Processing, Inc.

This Milwaukee, Wisconsin company filed a status decision application on July 23, 1973, to establish a scrap metal recycling operation on a small parcel leased at the Wilmington Marine Terminal. The Company would equip and move into existing vacant industrial buildings and would chemically remove the tin coating from cans and then clean, crush, and bale the scrap steel for re-use by can manufacturers. Some of the reclaimed tin cans would be taken from the New Castle County landfill at Pigeon Point, thereby extending the operating life of the landfill.

The status decision of August 16 was that a permit application was required for this new manufacturing use in the coastal zone. On August 20, the application was received, and on September 13 the public hearing on the application was held at Scott Plaza in Wilmington.

A coastal zone permit was granted on November 9, 1973, subject to conditions that Metal Cleaning and Processing, Inc. would meet all State environmental quality regulations and that its scrap recycling operation would not be detrimental to the planned State of Delaware Solid Waste Demonstration Project at Pigeon Point. Prior to approval of the permit, officials of the Company and the Department of Natural Resources and Environmental Control had thoroughly discussed these matters.

No appeal of the permit decision was filed.

Project Number 38 - Degussa Delaware, Inc.

On July 24, 1973, Degussa Delaware, Inc., a subsidiary of Degussa, a major West German chemical company, applied for a status decision for a new chemical plant to be constructed on a 25 acre plot of land owned by the company in the vicinity of the Getty Oil refinery north of Delaware City.

Degussa proposed to manufacture Aerosil, a fumed silica product, used in printing ink, rubber, plastics, toothpaste, adhesives and polishes among other things.

The State Planner's status decision of August 31, (advertised on September 5) was that this would be a new heavy industry and, therefore, prohibited in the coastal zone. The decision stated that the project had physical and land area characteristics and environmental pollution potentials identifying a heavy industry use.

The Company appealed this status decision to the State Coastal Zone Industrial Control Board on September 18. The Board held its public hearing on the appeal at the Governor Bacon Health Center at Delaware City on October 18, 1973.

Degussa's appeal claimed that the proposed chemical plant did not meet the definition of heavy industry use. The plant would occupy only six acres of the 25 acre site. The plant would have only two of the types of equipment that define a heavy industry use. And the plant would not have a potential to pollute due to human error or equipment malfunction. Degussa asked the Board to reverse the State Planner's decision and to allow the Company to apply for a coastal zone permit.

On November 12, 1973, the Board announced its appeal order. The decision was by a 6 to 0 vote to reverse the State Planner's status decision.

At that point, Degussa could have applied for a coastal zone permit as a new manufacturing use. The Company did not apply for a permit. In late 1973, Degussa publicly announced plans to build a large chemical plant near Mobile, Alabama including production of fumed silica.

Project Number 39 - Amoco Chemical Corporation

A project to debottleneck a polymerization unit to increase polypropylene resin production capacity by approximately 5 percent at its New Castle Polymer Plant was the subject of a status decision application on August 20, 1973, by Amoco Chemical Corporation.

The status decision of October 18, 1973, was that no coastal zone permit was required since this project did not meet the "significant" effects test for defining expansions or extensions of non-conforming uses requiring coastal zone permits.

There was no decision appeal.

Project Number 40 - Standard Chlorine of Delaware, Inc.

A status decision application was filed on September 20, 1973, by Standard Chlorine of Delaware, Inc. for new and improved equipment and storage facilities to increase monochlorobenzene production at its chlorinated benzenes plant on Governor Lea Road north of the Getty Oil refinery.

EXHIBIT C

**DELAWARE
COASTAL ZONE ACT
PERMIT**

NUMBER: 372

ISSUED TO: Voigt and Schweitzer, Inc.

TO PERMIT: Construction and operation of a 5.5 acre zinc coating operation to galvanize 36 million pounds of steel per year.

SITE LOCATION: River Road Industrial Park II, New Castle County

Conditions Incorporated and Made Part of this Permit:

1. This permit is conditional upon the permittee's compliance with all other applicable permit requirements, regulations and laws of the State of Delaware.
2. Implementation of all components of the offset project as specified on the record in this proceeding shall be complete by September 15, 2008.
3. Issuance of this permit does not relieve the permittee of the legal obligation of complying with all building permit, subdivision and other applicable code requirements of the county and municipality wherein the permitted project is located.
4. If there are significant deviations from the plan and operations approved by the Secretary, the permittee shall notify the Secretary as soon as possible. This permit may be revoked and a new permit application required if the Secretary deems the deviation to substantially change the nature or scale of the project and to be of actual or probable harm to the purposes of the Coastal Zone Act.
5. Are special condition(s) attached to this permit on one or more separate pages? XX No Yes

Signature: _____

John A. Hughes, Secretary

Department of Natural Resources & Environmental Control

Date: 7/12/07

EXHIBIT D

From: Drane, Jr. W. Harding
Sent: Tuesday, March 30, 2010 11:03 AM
To: Drane, Jr. W. Harding Listed Alphabetically | Listed by Department
Subject: Emailing: AWM E-News 7-2-07.htm

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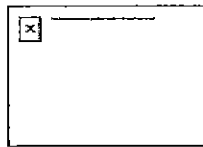
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Division of Air and Waste Management

Air and Waste News in Delaware, 7/2/07

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 (Suggestions? Additions? Please e-mail Christina.Wirtz@state.de.us, or call Christina at (302) 395-2600.)
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<http://www.dnrec.state.de.us/DNREC2000/admin/maillists/maillists.htm>.
There is no form to fill out; it's done in three clicks!

DNREC/DART Mid-County Community Yard Waste Drop-off Site Opens Friday, July 6! New Castle County's first public yard waste drop-off will be accepting yard waste this Friday. DNREC, the Delaware Solid Waste Authority (DSWA), the Delaware Area Regional Transit (DART) and the county have teamed together to offer a **no cost** option to the state's northern residents for disposing of their yard waste and also to offer **free mulch** made from it. The 3-acre site will be open every Friday, Saturday, and Sunday from 8:30 AM until 4:30 PM. The DART Mid-County facility is located at the southwest corner of U.S. Rt. 13 and Rt. 72 near Bear. Please enter the site from U.S. Rt. 13. For more information on recycling yard waste, please contact Jim Short or Bill Miller at (302) 739-9403, or visit:

<http://www.dnrec.delaware.gov/yardwaste/Default.htm>. Additional site information is available at:
<http://www.dnrec.state.de.us/dnrec2000/admin/press/story1.asp?PRID=2561>.

DNREC and Premcor Reach Global Settlement of Compliance Issues at Refinery in Delaware City – DNREC has entered into a global settlement with The Premcor Refining Group Inc. for alleged air pollution, hazardous waste and water pollution violations at its refinery in Delaware City. The settlement resolves all outstanding instances of potential noncompliance with DNREC laws and regulations by Premcor at the refinery between May 1, 2004 and Sept. 30, 2006. The settlement is worth \$1.75 million in penalties and environmental projects, \$4.5 million in upgrades, and will improve equipment reliability and monitoring while reducing emissions. Under the agreement, Premcor will pay an administrative penalty of \$425,000 related to alleged air violations and \$30,000 related to alleged hazardous waste violations. For more information on the settlement, please visit: <http://www.dnrec.state.de.us/dnrec2000/admin/press/story1.asp?PRID=2559>. For additional information on the settlement or activities at the refinery, please contact DNREC's site engineers, Ravi Rangan and Bruce Steltzer, at (302) 323-4542. See also Premcor's Regulation 1102 Natural Minor Permit

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Application in "Documents Available for Comment or Appeal" section below.

Coastal Zone Act Public Hearing on Voigt and Schweitzer, Inc. Application for a Coastal Zone Act Permit in New Castle – DNREC reviewed Voigt and Schweitzer, Inc.'s (V&S's) application, received on March 15, 2007, to construct and operate a 5.5 acre zinc coating operation to galvanize 36 million pounds of steel per year at River Road Industrial Park II in New Castle County. Proposed operations from the new facility would result in 3.36 tons of total air emissions per year, 50 tons of solid waste per year and 75,000 gallons of hazardous waste per year. There would be no direct industrial or process discharge into surrounding surface waters; however, the storm water discharge at the site may increase. The public hearing is scheduled for Thursday, July 19th, 2007, beginning at 6:00 PM in conference rooms A & B at DNREC's offices at 391 Lukens Drive in New Castle.

In order to mitigate the environmental impacts from this facility, V&S's Offset Proposal includes the following provisions: (1) the use of 7 tons of air emissions credits from the Delaware Economic Development Office (DEDO); (2) a \$5,000 donation to the Town of New Castle for an improved air conditioning system in City Hall, reducing electrical usage by 6,750 kilowatt hours annually and thereby reducing expected air emissions from local or regional power plants; (3) a \$2,500 donation to Main Street, Delaware City, Inc. to be used exclusively for the restoration of the Dragon Run Creek ecosystem; (4) purchasing 100 Red Cedar trees for planting in the Coastal Zone; (5) the installation of berms, filters, or catch basins to collect any suspended particles from increased storm water runoff; (6) the recycling and removal of solid waste out of the Coastal Zone; and (7) transfer and removal of hazardous waste out of Delaware.

The V&S application is now considered to be preliminarily, administratively complete and sufficient to proceed to public hearing. The V&S Coastal Zone Permit application and the Secretary's Environmental Assessment Report for this proposed facility are on public display at the Hockessin, Wilmington, and Delaware City public libraries, as well as the DNREC offices at 715 Grantham Lane in New Castle and 89 Kings Highway in Dover. For more information on the Coastal Zone Permit application, please contact Phil Cherry at (302) 739-9000 or visit: <http://www.dnrec.state.de.us/dnrecis/redirect.asp?ID=2425&MsgType=P>. See also V&S's Natural Minor Permit application in "Documents Available for Comment or Appeal" section below.

Upcoming Air and Waste-Related Hearings, Meetings & Events

July Meetings of the Local Emergency Planning Committees (LEPCs) – The LEPCs were appointed by the Delaware State Emergency Response Commission. The LEPC provides a forum for interaction and information sharing among businesses, government officials, emergency organizations, and the public. The meetings will be held at the following times and locations:

- **July 9** – New Castle County LEPC will meet at 2:30 PM at DNREC's offices at 391 Lukens Drive in New Castle.
- **July 10** – Kent County LEPC will meet at 9 AM at Dow Reichhold Specialty Latex LLC located at 144 Fork Branch Road, off of Route 13 in Dover. **July 13** – City of Wilmington LEPC will meet at 10 AM at the Public Safety Building on 300 North Walnut Street in Wilmington.
- **July 13** – City of Wilmington LEPC will meet at 10 AM at the Public Safety Building on 300 North Walnut Street in Wilmington.

For more information, please contact Shannon Splittorff at (302) 739-9405, or visit: <http://www.serc.delaware.gov/event.shtml>.

July 18, 2007 – Recycling Public Advisory Council will meet from 1:30 to 3:30 PM at the Department of Health and Social Services (DHSS) Georgetown State Service Center located at 546 South Bradford Street in Georgetown. The Recycling Public Advisory Council meets monthly to discuss matters of recycling in Delaware. For directions or information on the center, please visit: <http://www.dhss.delaware.gov/dhss/main/maps/dsscmap/gtown.htm>. For more information about the meeting, please contact Bill Miller at (302) 739-9403 or visit: <http://info/RPAC.htm>.

July 19 – Coastal Zone Act Public Hearing on Voigt and Schweitzer, Inc. Application for a Coastal Zone Act Permit will begin at 6:00 PM in conference rooms A & B at DNREC's offices at 391 Lukens Drive in New Castle. For more information, please contact Phil Cherry at (302) 739-9000 or see "News Updates" section above.

July 20 – Brownfields Advisory Committee Meeting will be held at the Biden Environmental Training Center, Cape Henlopen State Park, 42 Cape Henlopen Drive in Lewes. For information regarding the center, please contact Mary Wagner at (302) 644-5005. A map and directions are also available at: <http://www.destateparks.com/know/event/facibiden.htm>. For more information regarding the meeting, please contact Christina Wirtz at (302) 395-2500, or visit: <http://www.delaware.gov/eGov/Calendar.nsf/Meetings/2549D220BA4E8BA785257306005CF7DC?open>.

July 25 – Workshop on Amendments to Delaware Regulations Governing Solid Waste will be held from 10:00 AM to 12:00 PM at the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway in Dover. The regulatory informational workshop will review the proposed amendments to the Delaware

Regulations Governing Solid Waste. To register for the workshop or for more information, please contact Justin Roscoe at (302) 739-9403. Information on the workshop is also available at:

<http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2424&MsgType=P> and

<http://www.delaware.gov/eGov/Calendar.nsf/Meetings/9487C6C9E478DD488525730500476922?open>.

July 26 – Workshop on Amendments to Delaware Regulations Governing Air Pollution will be held at 6:00 PM at the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway in Dover. The regulatory informational workshop will review the planned amendment to Subpart N of Regulation No. 1138 (formerly Regulation No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories. This amendment will affect owners or operators of chromium electroplating or anodizing facilities. The purpose of the workshop is to review the changes in the draft amendment and to solicit comments and recommendations for revisions from the public. The draft regulation and background information can be viewed on Air Quality Management's (AQM's) website at: <http://info/Regs/Subpart+N.htm>. For additional information, please contact Jim Snead, AQM, at (302) 323-4542, or visit: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2428&MsgType=P>.

Secretary's Order

New Regulation to Control Emissions of Stationary Combustion Turbines – Secretary's Order 2007-A-0023, signed June 19, 2007, adopted Regulation No. 1148, "Control of Stationary Combustion Turbine Electric Generating Unit Emissions," to help control emissions of nitrogen oxides (NOx) from existing, stationary combustion turbines during high electric demand days (HEDD) in the ozone season. In addition to achieving emission reductions, the regulation will help meet Delaware's obligation to support the Ozone Transport Commissions Regional HEDD NOx reduction initiative for the units subject to the regulation. For more information on the new regulation, please contact Paul Foster, Air Quality Management, at (302) 323-4542.

Documents Available for Public Comment or Appeal

NOTIFICATION OF NEGOTIATIONS FOR BROWNFIELDS VOLUNTARY CLEANUP PROGRAM (VCP) OR BROWNFIELDS DEVELOPMENT AGREEMENTS (BDAs)

DNREC's Site Investigation and Restoration Branch (DNREC-SIRB) is negotiating BDAs or Brownfields VCP Agreements for the sites listed below. The agreements are to perform an investigation and, if necessary, a remedial action, for the purpose of addressing risks posed by past releases of hazardous substances at these sites. Following cleanup, liability protection may also be granted. The BDA is only available to parties that are not current site owners. Current site owners of a certified Brownfields property may enter into a different agreement, the Brownfields VCP Agreement, designed for site owners who may already be liable as a potentially responsible party. If DNREC enters into a BDA or Brownfields VCP Agreement, a remedy will likely be required at the site in connection with the development project. The remedy usually consists of an investigation of the site to evaluate soil, sediment and groundwater on the property for the presence of hazardous substances. Depending on the results of the investigation, the remedy may also include a remedial action, in connection with the development of the property, to clean up hazardous substance releases. DNREC-SIRB is currently negotiating the following agreements:

- **1190 E. 7th STREET SITE, WILMINGTON** – A Brownfields VCP Agreement with **Mitchalan Corp**: The site is 1.44 acres in size and may have had a release of hazardous substances as a result of its past industrial use including as an area for disposal for incinerator ash, municipal waste material and demolition debris. For more information on the site, please contact Morgan Price or Lindsay Hall, the DNREC Project Managers, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnrec2000/Admin/Press/PublicNotices/PNDetail.asp?NOVID=2411>.
- **FORMER MILFORD FERTILIZER SITE, MIDDLETOWN** – A BDA with **Marl Pitt LLC**: The site is located at 4991 Summit Bridge Road and is 4.57 acres in size. The site may have had a release of hazardous substances as a result of its past use including a fertilizer storage and distribution center. For more information on this site, please contact Kristen Thornton, the DNREC Project Manager, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2412&MsgType=P>.
- **DELAWARE HUMANE SOCIETY SITE, WILMINGTON** – Signed a BDA with **SouthBank Associates, LLC**: The site is located at 701 A Street. However, SouthBank Associates, LLC could not continue the investigation so the owner of the site, the Delaware Humane Society, is now negotiating a Brownfields VCP Agreement with DNREC. The site consists of about 4.5 acres; previous investigations revealed the presence of hazardous substances related to former industrial activities. For more information on the site, please contact Babatunde Asere, the DNREC Project Manager, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnrec2000/Admin/Press/PublicNotices/List1.asp>.

NOTICE OF FINAL PLANS OF REMEDIAL ACTION

Notice Start Date: **07/01/2007** Notice End Date: **07/21/2007**

DNREC has given notice that for the sites listed below, the proposed plan of remedial action has been adopted as the final plan of remedial action. DNREC invited written comments on the proposed plans, however no comments were received. The final plans will be adopted as is, if there is no appeal to the Environmental Appeals Board by July 21, 2007. Please note that in addition to the specific library locations listed below, the plans are also available at the office of DNREC-SIRB, 391 Lukens Drive, New Castle, DE 19720, and are posted on DNREC-SIRB's website at <http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/>

under the subject "Announcements."

- **FINAL PLAN OF REMEDIAL ACTION FOR THE FORMER BASHER LANE SITE IN HOCKESSIN –** The site is located at Fitness Way and Valley Road, and is a certified Brownfields that is currently being redeveloped into the Hockessin Athletic Club. Previous owners used the property for repair facilities, mushroom farming, landscaping businesses, general contractor offices, and residences. An Interim Action was completed in October 2006 to remove an area of petroleum-impacted soil and debris at the site. DNREC has not identified any adverse environmental impacts from previous uses of the property, therefore, DNREC recommends No Further Action for the site. Copies of the proposed and final plans are available as listed above and at the Hockessin Library. For additional information on the site, please contact Kristen Thornton, the DNREC Project Manager, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2433&MsgType=P>.
- **FINAL PLAN OF REMEDIAL ACTION FOR THE 1330 THATCHER STREET SITE IN WILMINGTON –** The site is a certified Brownfields that is approximately 0.45 acres in size. Previous owners of the site used it for truck and equipment storage, as well as engine and equipment repair. In May 2006, New Castle County Habitat for Humanity, Inc. entered into a Brownfields Development Agreement with DNREC to clean up the site and build 12 town homes on the lot. The plans for site redevelopment include the demolition of site structures, removal of the underground storage tank and its associated piping, re-grading, and then construction of the residential housing, concrete sidewalks and landscaping. The contaminants of concern at the site are metals (including arsenic and lead) and semi-volatile organic compounds, including benzo(a)pyrene. Copies of the proposed and final plans of remedial action are available as listed above and at the Wilmington Library. For additional information, please contact Stephen Johnson, the DNREC Project Manager, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2434&MsgType=P>.
- **AMENDED FINAL PLAN OF REMEDIAL ACTION FOR THE FORMER DP&L ELSMERE SUBSTATION SITE IN ELSMERE –** The site is located at 400 Baltimore Avenue and is currently a vacant lot with a small, one-story building near the center of the property. Previous owners used the property as an electrical substation and subsequently, for equipment and roll-off storage. The plan for redevelopment at the site is as a public park. Because the site use changed from commercial use to residential use (as a park), DNREC amended the original final plan, dated December 2001. Copies of the original proposed plans and amended final plans are available as listed above and at the Elsmere Library. DNREC did not receive any substantial comments to the amended proposed plan. For additional information, please contact Lindsay Hall, the Project Manager, at (302) 395-2600, or visit: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2435&MsgType=P>.

TITLE: V MODIFICATION APPLICATION FOR INVISTA-SEAFORD PLANT

Notice Start Date: **07/01/2007** Notice End Date: **07/31/2007**

DNREC received an application from Invista-Seaford Plant for a minor permit modification in accordance with the procedures of Regulation No. 30 of the State of Delaware, which clarifies a permit condition for the 94 MMBTU/hr Nebraska Package boiler at the facility.

A public hearing concerning the permitting action will NOT be held unless the Secretary of DNREC receives a request for such hearing by July 31, 2007. The application and any related materials may be inspected at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware and 715 Grantham Lane, New Castle, Delaware. To submit comments, for additional information or for an appointment to inspect the application, please contact Joanna Austin at the Dover Office at (302) 739-9402. Additional information is available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2426&MsgType=P>.

TITLE V PERMIT APPLICATION FOR A. I. DUPONT HOSPITAL FOR CHILDREN IN WILMINGTON

Notice Start Date: **06/27/2007** Notice End Date: **07/27/2007**

Notice has been given that A. I. DuPont Hospital for Children has submitted an application for a 37 MMBTU/hr boiler permit pursuant to Regulation No. 1102, Sections 2.1, 11.2.9, and 12.3, and Regulation No. 30, Section 7 at their Wilmington facility located at 1600 Rockland Road. The new boiler will replace the existing 37.5 MMBTU/hr boiler No. 1, which used No. 6 fuel oil. The new boiler will be fired primarily on natural gas with No. 2 fuel oil as a secondary back-up fuel. Based on the data and certifications contained in the application, the Air Quality Management Section concludes that the applicant meets all applicable requirements promulgated by the USEPA and DNREC. Therefore, a "draft" permit has been prepared.

A public hearing concerning the permitting action will NOT be held unless the Secretary of the Department of Natural Resources and Environmental Control receives a request for such hearing by July 27, 2007. The application, the "draft" permit all materials that the applicant has submitted (other than those granted confidential treatment under DNREC rules), and a copy of summary of other materials, if any, considered in preparing the "draft" permit may be inspected at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware and 715 Grantham Lane, New Castle, Delaware. To submit comments, for additional information or for an appointment to inspect the application, please contact Joanna Austin at the Dover Office at (302) 739-9402. Additional information is available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2423&MsgType=P>.

REGULATION 1102 NATURAL MINOR PERMIT APPLICATION FOR PREMCOR REFINING GROUP INC. IN DELAWARE CITY

Notice Start Date: **07/01/2007** Notice End Date: **07/16/2007**

Notice has been given that The Premcor Refining Group Inc. requested a permit to modify the existing fluid catalytic cracking unit's (FCCU) Belco wet gas scrubber and Cansolv absorber to allow for construction of a nitrogen oxide (NOx) pollution control device at their facility located at 4550 Wrangle Hill Road facility in Delaware City. The control technology, called Wet Gas Scrubbing Plus (WGS+), will reduce the NOx emissions from the FCCU to a rate 20 parts per million (ppm) and a yearly limit of 207 tons. This project does not involve any process or hardware changes to the FCCU or carbon monoxide boiler operation and will not result in any other process emission changes. The basis for this project is found in the agreement regarding The Premcor Refining Group Inc. – NOx Emissions Reductions from FCCU by and between The Premcor Refining Group Inc. and DNREC entered on July 6, 2006. Section III of the Agreement requires Premcor to identify an emissions reduction option by June 1, 2007 to be achieved by May 1, 2009. Premcor shall implement such changes during a turnaround of the FCCU carbon monoxide boiler prior to May 1, 2009.

A public hearing on any of the above applications will NOT be held unless the Secretary of DNREC receives a request for a hearing regarding the application by July 16, 2007. The application for this permit may be reviewed at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware or 715 Grantham Lane, New Castle, Delaware. For additional information or for an appointment to review the application, please contact Joanna Austin at (302) 739-9402. Additional information is available: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2427&MsgType=P>. See also Premcor's global settlement with DNREC in "News Update" section above.

REGULATION 1102 NATURAL MINOR PERMIT APPLICATIONS

Notice Start Date: **06/27/2007** Notice End Date: **07/12/2007**

Notice has been given that:

- **Voigt & Schweitzer, Inc.,** requests a permit to construct and operate a hot dip zinc galvanizing facility, to be referred to as **V&S Galvanizing New Castle, in the River Road Industrial Park II Subdivision on Carroll Drive in New Castle.** The galvanizing process would have the potential to emit (PTE) 0.19 tons per year (TPY) of volatile organic compounds (VOCs), 17.45 TPY particulate matter (PM), 6.15 TPY ammonium chloride, 2.50 TPY zinc oxide, 2.86 TPY carbon monoxide, 0.46 TPY zinc chloride, 1.70 TPY oxides of nitrogen (NOx), 0.02 TPY oxides of sulfur (SOx), 0.0012 TPY lead and lead compounds, 0.04 TPY hydrogen chloride (HCl), 2.84 TPY zinc ammonium chloride, and 0.011 TPY ammonia.
- **Allen's Hatchery, Inc. – Allen's Milling Division,** requests cancellation of their Regulation No. 30 operating permit due to reduction of sulfur emissions below the 100 ton per year major source threshold. Emission reductions are from the replacement of older equipment with new equipment, including two new 20.9 MMBTU/hr boilers fired with No. 6 fuel oil with a sulfur content of 0.5 percent sulfur by weight, a new 1,260 tons per hour (TPH) railcar grain unloading station, and two 70 TPH hammermills at their **Route 13-A, Delmar, Sussex County facility.**

Although a public hearing has been scheduled for Voigt & Schweitzer, Inc.'s Coastal Zone Permit application (see "News Updates" section above), a public hearing on the above Natural Minor permit applications will NOT be held unless the Secretary of DNREC receives a request for a hearing regarding that application by July 12, 2007. The applications for these permits may be reviewed at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware or 715 Grantham Lane, New Castle, Delaware. For additional information or for an appointment to review the application, please contact Joanna Austin at (302) 739-9402. Additional information is also available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2422&MsgType=P>.

TITLE V MODIFICATION APPLICATION FOR DSWA'S SOUTHERN SOLID WASTE MANAGEMENT CENTER IN GEORGETOWN

Notice Start Date: **06/20/2007** Notice End Date: **07/21/2007**

DNREC's Air Quality Management Section received an application from DSWA's Southern Solid Waste Management Center (Jones Crossroads Landfill) for a Minor Permit Modification in accordance with the procedures of Regulation No. 30 of the State of Delaware "Regulations Governing the Control of Air Pollution." The Minor Permit Modification consists of changing the date for submittal of the renewal application from 12 months to 10 months prior to the expiration date of the permit.

A public hearing concerning the permitting action will NOT be held unless the Secretary of the Department of Natural Resources and Environmental Control receives a request for such hearing by July 21, 2007. The application and any related materials may be inspected at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware and 715 Grantham Lane, New Castle, Delaware. To submit comments, for additional information or for an appointment to inspect the application, please contact Joanna Austin at the Dover Office at (302) 739-9402. Additional information is available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2419&MsgType=P>.

TITLE V SYNTHETIC MINOR PERMIT APPLICATION FOR ILC DOVER LP IN FREDERICA

Notice Start Date: **06/17/2007** Notice End Date: **07/17/2007**

Notice has been given that ILC Dover LP submitted an application, pursuant to Regulation No. 1102, Section 2.1, 11.2(i), and 12.3 for the construction of a pilot coating machine at One Moonwalker Road in Frederica. ILC Dover LP requests a limit for coating usage. These limits are necessary to restrict ILC Dover LP's potential to emit air pollutants, and the limit will be enforceable by the USEPA and the state.

Total estimated emissions from the coating lines are: 2.74 TPY of VOCs.

A public hearing concerning the permitting action will NOT be held unless the Secretary of DNREC receives a request for such hearing by July 17, 2007. The application, the "draft" permit, all materials that the applicant has submitted (other than those granted confidential treatment under DNREC rules), and a copy or summary of other materials, if any, considered in preparing the "draft" permit may be inspected at the office of the Division of Air and Waste Management, 156 S. State Street, Dover, DE 19901. To submit comments, for additional information or for an appointment to inspect the public file, please contact Joanna Austin in the Dover office at (302) 739-9402. Additional information is also available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2413&MsgType=P>.

TITLE V SYNTHETIC MINOR PERMIT APPLICATION FOR STROBERT TREE SERVICES, INC. IN WILMINGTON

Notice Start Date: **06/10/2007** Notice End Date: **07/10/2007**

Strobert Tree Services, Inc. has submitted an application, pursuant to Regulation No. 1102, Section 2.1, 11.2(i), and 12.3 to construct two wood grinders with associated diesel engines at 501 Christiana Avenue in Wilmington. Strobert Tree Services, Inc. requests a limit on the allowable hours of operation of each of the two units. These limits are necessary to restrict the facility's potential to emit air pollutants, and the limit will be enforceable by the USEPA and the state. Total estimated emissions from the facility are 13.73 tons per year of oxides of nitrogen (NOx), 0.76 tons per year of oxides of sulfur (SOx), 1.59 tons per year of carbon monoxide (CO), 0.25 tons per year of volatile organic compounds (VOCs), and 5.66 tons per year of particulate matter.

A public hearing concerning the permitting action will NOT be held unless the Secretary of the DNREC receives a request for such hearing by July 10, 2007. The application, the "draft" permit, all materials that the applicant has submitted (other than those granted confidential treatment under DNREC rules), and a copy or summary of other materials, if any, considered in preparing the draft permit may be inspected at the office of the Division of Air and Waste Management, 156 S. State Street, Dover, DE 19901. To submit comments, for additional information or for an appointment to inspect the public file, please contact Joanna Austin with the Dover office at (302) 739-9402. Additional permit information is available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2403&MsgType=P>.

TITLE V PERMIT FOR AIR LIQUIDE INDUSTRIAL U.S. LP IN DELAWARE CITY

Notice Start Date: **06/10/2007** Notice End Date: **07/10/2007**

Air Liquide Industrial U.S. LP at 4442 Wrangle Hill Road in Delaware City has submitted a request for a Title V permit pursuant to Regulation No. 30, Section 7. Based on the data and certifications contained in the application, the Air Quality Management Section concludes that the applicant meets all applicable requirements promulgated by the USEPA and DNREC. A "draft" permit has been prepared, and includes the update in requirements for facility-wide visible missions.

A public hearing concerning the permitting action will NOT be held unless the Secretary of the DNREC receives a request for such hearing by July 10, 2007. The application, the draft permit, all materials that the applicant has submitted (other than those granted confidential treatment under DNREC rules), and a copy of summary of other materials, if any, considered in preparing the draft permit may be inspected at the offices of the Division of Air and Waste Management, 156 S. State Street, Dover, Delaware and 715 Grantham Lane, New Castle, Delaware. For additional information or an appointment to inspect the application, please contact Joanna Austin with the Dover Office at (302) 739-9402. Additional permit information is available at: <http://www.dnrec.state.de.us/dnreceis/redirect.asp?ID=2404&MsgType=P>.

Employee News

Kurt Reuther, Chief of Enforcement, has left the Division of Air and Waste Management to work with the Delaware State Police in the Delaware Intelligence Analysis Center. We wish the Chief well in his future endeavors.

Contact the Division

- 24-Hour Report and Spill Notification Line - 1-800-662-8802
- Aboveground Storage Tanks - 302-395-2500
- Air Quality - Dover Office - 302-739-9402
- Air Quality - New Castle Office - 302-323-4542
- Asbestos New Castle - 302-323-4542
- Asbestos Kent & Sussex - 302-739-9402
- Boiler Safety - 302-744-2735
- Brownfields - 302-395-2600
- Director's Office - 302-739-9400
- Emergency Prevention and Response - 302-739-9404

- Enforcement - 302-739-9401 or 1-800-662-8802
- Hazardous Waste - 302-739-9403
- Medical Waste - 302-739-9403
- Open Burning - 302-739-9402
- Outreach Ombudsman - 302-395-2515
- Recycling - 302-739-9403
- Site Investigation & Restoration Branch (Superfund/Brownfields) - 302-395-2600
- Solid Waste - 302-739-9403
- Underground Storage Tanks - 302-395-2500

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